IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

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O R D E R

S.B.Criminal Revision Petition No.759/2007

Master Devi Ram vs. State of Rajasthan & Anr.

Date of Order :::: October 9,2007

HON'BLE MR.JUSTICE G.S.SARRAF

Mr.A.K.Gupta for petitioner
Mr.B.S.Chhabbha, P.P.
Mr.N.A.Naqvi for respondent No.2.

By the Court:-

This criminal revision petition of the accused petitioner is directed against the order dated 5th June, 2007 passed by Additional District and Sessions Judge (Fast Track) No.3, Bharatpur whereby application filed by the complainant respondent No.2 under Section 319 Cr.P.C. has been partly alowed and cognizance has been taken against the accused petitioner of the offence under Section 302 read with Section 34 IPC.

Briefly stated the facts of the case are that one Baldev Sharma lodged a report at 9.15 P.M. On 2nd December, 2006 that at about 9.00 P.M. On 1st December,

2006 he and his parents were sleeping in the house. Suddenly, he heard abuses and cries of his father and he saw that the petitioner Devi Ram, Gopal, Meena, Prem Sukh and Kishori Shyam were beating his father. He and his mother wanted to go to rescue his father but the room was bolted from out side. The petitioner Devi Ram inflicted an injury with an axe on the head of his father and his father became unconscious. On arrival of some people from the village the accused fled away. The villagers opened the door of their room and thereafter he took his father to Bharatpur Hospital and on 2nd December, 2006 his father was referred to Jaipur Hospital. On the basis of this report, a case under Sections 143, 323, 341 IPC was registered at the Police Station Kumher, district Bharatpur vide FIR No.409/2006. It appears that the deceased Jag Mohan died during treatment at 00.20 a.m. on 5th December, 2006. After investigation, a challan was submitted against the accused Kishori Shyam and Gopal before Additional Chief Judicial Magistrate No.4, Bharatpur under Sections 323, 341, 307, 302, 34 IPC, who in turn committed the case to the District and Sessions Judge, Bharatpur from where the case was transferred to Additional District and Sessions Judge (Fast Track) No.3, Bharatpur. After framing the charge under Section 302 read with Section 34 IPC against the accused Kishori Shyam and Gopal, statements of the prosecution witnesses Baldev Sharma PW.1, Laxmi Narayan PW.2, Nibbo PW.3 and

Rajesh PW.4 were recorded. The complainant then filed an application under Section 319 Cr.P.C. to take cognizance against the accused petitioner Devi Ram and two others, namely Prem Sukh and Meena. Learned trial court by impugned order dated 5th June,2007 took cognizance of the offence under Section 302 read with Section 34 IPC against the accused petitioner Devi Ram and dismissed the application with regard to Prem Sukh and Meena. Aggrieved by this order, the accused petitioner has filed this revision petition.

Heard learned counsel for the petitioner, learned Public Prosecutor and learned counsel for the respondent No.2.

Mr. A.K. Gupta, learned counsel for the petitioner, has contended that in this case learned trial court has taken cognizance only on cursory appraisal of the evidence whereas cognizance under Section 319 Cr.P.C. cannot be taken in a routine way and before taking cognizance the court must be satisfied that there exists a possibility that the accused in all likelihood would be convicted. He has contended that the approach of the learned trial court is entirely erroneous and, therefore, the impugned order is not sustainable. He has placed reliance on **JT 2007(5) SC 562, (2005) 12 SCC 327.** He has further contended that there is no injury on the head of the deceased caused by sharp weapon but even otherwise no offence is made out under Section 302 IPC by using an

axe from blunt side. He has placed reliance on **AIR 1981 SC 1552.** He has also cited **AIR 1974 SC 1936 and 1976 WLN 68.**

Learned Public Prosecutor and learned counsel for the respondent No.2 have supported the impugned order.

Under Section 319 Cr.P.C. the trial court has undoubted jurisdiction to add any person not being accused before it to face trial along with other accused persons if the court is satisfied at any stage of the proceedings on the evidence adduced that the person who has not been arrayed as accused should face trial. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case.

In the present case, the accused petitioner has been named and the weapon with which he was armed has been specified and the role played by him has been described in the FIR. It has of course not been stated in the FIR that the accused petitioner used the axe from the blunt side but the witnesses Baldev PW.1, Nibbo PW.3 and Rajesh PW.4 in their statements recorded by the trial court have stated that the accused petitioner used the axe from the blunt side. The effect, if any, of the omission in the FIR that the axe was used from the blunt side will be seen in the trial and not at this stage. The power conferred under Section 319 Cr.P.C. should be used very sparingly and only if compelling reasons exist and the

court must also be satisfied that there exists a possibility that the accused so summoned in all likelihood would be convicted. Keeping the above principle in mind and having regard to the evidence available on record it cannot be said that the trial court has exercised its discretion illegally or arbitrarily so as to call for any interference by this Court in the exercise of revisional jurisdiction.

As regards the argument that the use of axe from blunt side does not make out an offence under Section 302 IPC, suffice it to say that the co-accused are already facing trial under Section 302 read with Section 34 IPC and then in trial it will be seen what offence has been committed.

For the reasons stated above, I am not inclined to interfere.

The revision petition fails and is dismissed accordingly.

(G.S.Sarraf),J.

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